

**Supplemental Letter of Findings: 03-20150420**  
**Withholding Tax**  
**For the Years 2011 - 2013**

**NOTICE:** IC § 6-8.1-3-3.5 and IC § 4-22-7-7 require the publication of this document in the Indiana Register. This document provides the general public with information about the Department's official position concerning a specific set of facts and issues. This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register. The "Holding" section of this document is provided for the convenience of the reader and is not part of the analysis contained in this Letter of Findings.

**HOLDING**

Indiana Employer established that it was not responsible for county withholding tax on wages it paid to several employees.

**ISSUE**

**I. Withholding Tax - Imposition.**

**Authority:** IC § 6-8.1-5-1; Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue, 867 N.E.2d 289 (Ind. Tax Ct. 2007); Indiana Dep't of State Revenue v. Rent-A-Center East, Inc., 963 N.E.2d 463 (Ind. 2012).

Taxpayer claims that it was not responsible for county income tax withholding on several employees who were hired after January 1, 2011, or January 1, 2012.

**STATEMENT OF FACTS**

Taxpayer, an Indiana Corporation, employs individuals to conduct its business in Marion County, Indiana. In 2014, the Indiana Department of Revenue ("Department") audited Taxpayer's business records and withholding tax returns for the 2011, 2012, and 2013 tax years ("Tax Years at Issue"). Pursuant to the audit, the Department found that Taxpayer failed to withhold Indiana and county income tax from the payments of wages it paid to various employees. The Department thus assessed Taxpayer additional state and county withholding taxes for the Tax Years at Issue as a result.

Taxpayer timely protested the assessment. An administrative hearing was conducted during which Taxpayer's representatives explained the basis for the protest. Letter of Findings 03-20150420 (August 2016) ("LOF") sustained Taxpayer's protest in part and denied it in part. Taxpayer subsequently submitted additional documentation to support its rehearing request. This Supplemental Letter of Findings ensues. Additional facts will be provided as necessary.

**I. Withholding Tax - Imposition.**

**DISCUSSION**

Taxpayer disagrees with the LOF which found that it was liable for county income tax withholding regarding various individuals who were hired after January 1, 2011 or January 1, 2012. Taxpayer further claimed that one employee who resided in Lake County, Indiana, worked from home. Since Lake County did not impose the county income tax for the tax year 2012, it was not responsible for county withholding tax on that employee. Taxpayer offered additional documents to support its rehearing request and this Supplemental Letter of Findings incorporates the relevant facts and applicable law established in the LOF.

As mentioned in the LOF, Taxpayer here bears the burden of proving that the proposed assessment is wrong because all tax assessments are prima facie evidence that the Department's claim for the unpaid tax is valid. IC § 6-8.1-5-1(c); Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007); Indiana Dep't of State Revenue v. Rent-A-Center East, Inc., 963 N.E.2d 463, 466 (Ind. 2012).

In this instance, a review of its supporting documentation, Taxpayer demonstrated that it was not responsible for withholding the county income tax on wages it paid to several individuals, as follows:

- For 2011, MG, DR, EB, JG, BH, CH, JG, and MP who were first hired after January 1, 2011;
- For 2012, FMW, GC, and JA who were first hired after January 1, 2012;

As to the individual, ES, in this instance, Taxpayer stated that ES resided in Lake County, Indiana and worked as "field employee [] out of [the personal] home." Taxpayer further stated that Lake County did not impose county income tax and thus it was not required to withhold the county income tax.

Upon review, however, the Department is not able to agree. First, in addition to ES's W2 and internal personnel records, Taxpayer offered an unsigned statement from ES, giving Taxpayer notice that January 16, 2013, was the last day of ES's employment with Taxpayer. The Department acknowledges that ES's mailing address was (and thus, ES presumably resided in) Lake County in 2012. However, the Department is not able to agree that the documents supported that ES worked out of the personal home in Lake County because the record referred to "Pers[on is] . . . Indianapolis . . . ." Taxpayer thus was required to withhold the non-resident rate of the Marion county income tax from wages it paid to ES.

### **FINDING**

Taxpayer's protest is sustained in part and denied in part. Taxpayer remains responsible for withholding the county income tax from wages it paid to ES at non-resident rate. The Department's Enforcement Division is requested to revise the proposed assessment pursuant to LOF and this Supplemental Letter of Findings.

*Posted: 01/25/2017 by Legislative Services Agency*  
An [html](#) version of this document.